

VZCZCXRO6438
PP RUEHBI
DE RUEHLM #0697/01 1950431
ZNY CCCCC ZZH
P 140431Z JUL 09
FM AMEMBASSY COLOMBO
TO RUEHC/SECSTATE WASHDC PRIORITY 0231
INFO RUEHKA/AMEMBASSY DHAKA 1787
RUEHIL/AMEMBASSY ISLAMABAD 8800
RUEHKT/AMEMBASSY KATHMANDU 7039
RUEHLO/AMEMBASSY LONDON 5055
RUEHNE/AMEMBASSY NEW DELHI 3174
RUEHNY/AMEMBASSY OSLO 5013
RUEHOT/AMEMBASSY OTTAWA 1292
RUEHSM/AMEMBASSY STOCKHOLM 0553
RUEHKO/AMEMBASSY TOKYO 4120
RUEHCG/AMCONSUL CHENNAI 9397
RUEHBI/AMCONSUL MUMBAI 6699
RUEHON/AMCONSUL TORONTO 1218
RHEFDIA/DIA WASHINGTON DC
RUEHGV/USMISSION GENEVA 3631
RHHMUNA/HQ USPACOM HONOLULU HI
RUEHBS/USEU BRUSSELS
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC
RUEKJCS/SECDEF WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 000697

SIPDIS

DEPARTMENT FOR SCA/INSB

E.O. 12958: DECL: 06/25/2019

TAGS: [PGOV](#) [PREL](#) [PREF](#) [PHUM](#) [PTER](#) [EAID](#) [MOPS](#) [CE](#)

SUBJECT: NEW SRI LANKA MINISTER OF JUSTICE AND NEW SUPREME
COURT FACE CHALLENGES AND OPPORTUNITIES IN A DIFFICULT
LEGAL ENVIRONMENT

Classified By: CHARGE D'AFFAIRES JAMES R. MOORE. REASONS: 1.4 (B, D)

¶1. (C) SUMMARY: On July 2, President Rajapaksa swore in Milinda Moragoda as the new Minister of Justice and Law Reforms. Earlier in June, the President appointed a new Chief Justice, Asoka de Silva, to replace former Chief Justice Sarath de Silva, who many observers felt had "hyper-politicized" the Supreme Court during his tenure. These two new senior appointments could help change the tenor of Sri Lanka's legal system, yet fundamental rule of law problems weigh against any easy changes, and the overall Sri Lankan legal system remains deeply troubled. The main problems continue to be the overarching influence of the President, the overreaching jurisdiction and actions of the Ministry of Defense, threats against lawyers and impunity for abuses which not only includes human rights violations but also popularly-supported vigilante killings against certain criminals. While large-scale change may not be possible in the short term, the influence of these new appointments could set the stage for positive changes in the longer term. END SUMMARY.

THE NEW APPOINTMENTS MAY BE POSITIVE STEPS...

¶2. (C) The appointment of the vibrant and well-regarded Milinda Moragoda as the new Minister of Justice and Law Reforms offers some grounds for optimism. Post regards him as an intelligent and savvy politician who, despite leaving the opposition UNP in 2007 to go over to the ruling coalition, has thus far avoided branding himself narrowly within the president's shadow. In private meetings, he has indicated his receptiveness to reformist ideas, while at the same time indicating that what he may be able to accomplish is limited. The previous minister was ill and languished for several years before his death at the end of May, so the Ministry has been without an active head for an extended period.

¶3. (C) Moragoda told Charge on July 9 that because of the recent relative inactivity at the top of the Justice Ministry, he will need to carve out space for a leadership role, and quickly. He expects to be in this position only until Parliamentary elections are held, which many expect to

take place in early 2010, and must take place by April 2010. Moragoda has said he hopes to reduce polarization between the Justice Ministry and the police. He told Charge that President Rajapaksa asked him specifically to focus on crime within the prison system, especially that involving drug trafficking.

¶3. (SBU) The June appointment of Asoka de Silva as the chief justice was widely welcomed even as observers regretted that this appointment was not made through the involvement of the Constitutional Council. He is known as a capable and fair jurist and is expected to work more collaboratively with his colleagues. He served as a judge on the International Criminal Tribunal for Rwanda which may serve to give him a fresh perspective in dealing with some of the rule of law challenges in Sri Lanka.

...BUT THE JURY IS STACKED AGAINST CHANGE

¶4. (C) Sri Lanka's legal system faces three key challenges.

First, the executive has exerted almost complete control over judgments and procedures. Second, the Emergency Regulations and the Prevention of Terrorism Act have transferred many legal issues to the Ministry of Defense. Lastly, many private lawyers attempting to push for more consistent and transparent application of laws have been threatened and attacked by the Executive and Defense establishments. In addition, the issue of impunity, which not only includes the mysterious disappearances of and attacks on political opponents but also comprises a system of vigilante justice to deal with criminals prior to trial through extra-judicial killings that seems to discourage many from trusting the judicial system.

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¶5. (C) The Ministry of Defense controls key responsibilities in the administration of frequently used security laws. Their ability to detain and torture suspects held under these laws is not constrained by oversight from the Ministry of Justice or the courts. The Ministry of Defense has utilized these powers for perceived security gains which, in the view of many in civil society, cause longer term harm to the overall rule of law in Sri Lanka.

¶6. (C) Lawyers have been subjected to both threats and attacks. The Ministry of Defense recently published on its website an ominous article entitled "Where Are the Human Rights Violators" which equated lawyers with the causes of their clients. In October 2008, one prominent human rights lawyer had a grenade tossed into his house, which fortunately failed to detonate. In recent months, several lawyers have withdrawn from human rights cases citing pressure on them to do so from the police forces.

¶7. (C) Impunity is one of the most serious impediments to a functioning rule of law in Sri Lanka. This impunity comes in several forms - whether systematic, deliberate or popular. Prosecution of cases is very slow - it often takes years before a case is brought to trial. In terrorist or security cases, suspects are likely to spend protracted periods of time in prison without legal representation and under the jurisdiction of the Ministry of Defense before their cases are finally heard. In such cases, witnesses sometimes move, disappear or are pressured to not testify. If a suspect is released for lack of evidence or other cause, he or she is unable to file a case for their unfair detention. The deliberate cases of impunity, those directed against political opponents of the executive and those targeted by the military or paramilitary organizations, remain a significant issue that has yet to be addressed in any effective way. Finally, vigilante justice often substitutes for the judicial system, with an apparently high level of popular support in some instances and areas. For example, in Batticaloa, three suspects in a child rape case were killed while "trying to escape from police." Such cases are not uncommon. Credible media sources estimate that so far this year over 100 suspects have been killed trying to escape from police custody. While many of these persons were suspected of egregious crimes, the legal system was not allowed to judge or punish these cases.

¶8. (C) COMMENT: The appointment of these two new senior

officials in the Sri Lankan legal system is a welcome step forward. Addressing the weaknesses of the judicial system in Sri Lanka will require political will over a sustained period of time. These new appointments may provide an opportunity for Sri Lanka to begin to remedy some of the flaws of the legal system, many of which predate the fight against the LTTE. USG assistance can play an important role in strengthening the institutional capacity for much needed legal reform.

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